

REMARKS

Claims 1, 2, 5 and 13 are amended herein. Claims 1-20 remain pending in the application. Re-examination and reconsideration of the application, in view of the amendments made herein and the following remarks, are requested.

I. Rejection of Claims 1-3 Under 35 U.S.C. 102(e)

Claims 1-3 were rejected under 35 U.S.C. 102(e) as being anticipated by Miyashita et al. This rejection is respectfully traversed, in view of the claims as amended herein and the following remarks.

As amended, claim 1 recites that the second readout position means is for generating second audio phrase readout positions during and in conformance with operation of the operator by the performer. The claim further recites that the signal processing means is for playing back said audio phrase in accordance with said second audio phrase readout positions during the performer's operation of the operator, and for playing back said audio phrase in accordance with said first audio phrase readout positions after the duration of operation of the operator, when the operator is not being operated. These features are neither disclosed nor suggested by the Miyahsita et al. reference.

Miyashita et al. does not disclose or suggest an instrument in which playback is based on second audio phrase readout positions during the performer's operation of the operator, and playback is based on first audio phrase readout positions after the duration of operation of the operator. Instead, Miyashita et al. teach to set the playback speed (tempo) with one or two operators (13 and 14) and maintain the set playback speed (tempo), even after the user completes operation of the operators 13 and 14.

In particular, Miyashita et al. describe an information playback apparatus with loop playing features. The apparatus described by Miyashita et al. includes a playback speed (tempo) adjusting unit 13 and a jog dial 14 for adjusting playback tempo. The basic playback tempo is set

by the adjusting unit 13, while “the jog dial 14 is provided to further change a tempo with reference to the basic tempo set by the tempo adjusting unit 13.” (Miyashita, paragraph 0083.) Thus, the jog dial 14 is used to further adjust the tempo setting from a basic setting set by adjusting unit 13. Once the tempo is set by either adjusting unit 13 or the combination of adjusting unit 13 and dial 14, the tempo remains at the set playback speed. Miyashita et al., therefore, does not disclose or suggest an instrument of amended claim 1, in which signal processing means is provided for playing back an audio phrase in accordance with second audio phrase readout positions during the operation of an operator and in accordance with first audio phrase readout positions after the duration of operation of the operator, when the operator is not being operated.

Accordingly, it is submitted that claim 1, as amended herein, is distinguished from the Miyashita et al. reference. Claims 2 and 3 are dependent on claim 1 and, thus, are believed to be patentably distinct over the Miyashita et al. reference at least for reasons as discussed above with respect to claim 1.

In addition, it is also submitted that claim 2 recites features that are further distinguished from Miyashita et al. In particular, claim 2 recites that “the operator comprises a pressure sensitive surface and is operated by applying pressure to a location on the surface and moving the location.” In the rejection of claim 2, the Examiner cited paragraphs 0078 and 0080 of the Miyashita et al. reference as addressing the pressure sensitive surface. However, while Miyashita et al. describe a detecting unit 15 that detects “a pressing pressure when the user or the like touches the jog dial 14 by hand,” Miyashita et al. do not appear to describe or suggest a pressure sensitive surface that is operated by moving the location on the surface at which pressure is applied. Instead, Miyashita et al.’s jog dial receives and detects pressure, but the location of the pressure on the jog dial is not moved. According to Miyashita et al., the knob 14 detects pressure from a user “tapping the top surface” of the knob 14, but not from a user moving a location on a pressure sensitive surface. (Miyashita et al. paragraph 0079.) Accordingly, it is submitted that claim 2 is further distinguished from the Miyashita et al. reference.

In view of the foregoing, it is submitted that claims 1-3 are patentably distinguished from the Miyashita et al. reference and are in condition for allowance.

II. Rejection of Claims 4-9 and 13-17 Under 35 U.S.C. 103(a)

Claims 4-9 and 13-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miyashita et al. in view of Takehashi. For similar reasons as discussed above with respect to claim 1, it is also submitted that this rejection is traversed because claims 4-9 and 13-17 are patentably distinguished over the cited references. In particular, independent claim 5 recites an electronic musical instrument having, among other features, "a computer readable medium storing programming instructions for causing the instrument to perform processing operations, including, “after the duration of operation of the readout position change operator, when the readout position change operator is not being operated, playing back said audio phrase in accordance with said first waveform data readout positions." (underlines added for emphasis.) Also, independent claim 13 describes a method, wherein, "after the duration of operation of a readout position change operator, when the readout position change operator is not being operated, producing said audio signal from the audio waveform data using said first waveform data readout positions." (underlines added for emphasis.) As discussed above, Miyashita et al. neither describe nor suggest an instrument in which playing back an audio phrase in accordance with second readout positions during the operation of an operator and in accordance with first readout positions after the duration of operation of the operator, when the operator is not being operated. Therefore, it is submitted that each of independent claims 5 and 13 are patentably distinguished over the Miyashita et al. reference.

It is also submitted that independent claims 5 and 13 are patentably distinguished over the combination of Miyashita et al. and Takahashi suggested by the Examiner. In particular, the Takahashi reference does not address the above-noted distinction over the Miyashita et al. reference. Like Miyashita et al., Takahashi does not disclose or suggest an instrument in which playing back an audio phrase in accordance with second readout positions during the operation of an operator and in accordance with first readout positions after the duration of operation of the

operator, when the operator is not being operated. Moreover, the Takahashi reference was not cited by the Examiner for that purpose but, instead, was cited as providing a teaching of the processing of audio “waveform” data stored in a waveform memory. Therefore, it is further submitted that each of independent claims 5 and 13 are patentably distinguished over the Miyashita et al. reference and the Takahashi reference, individually or in the combination suggested by the Examiner.

Claims 4, 6-9 and 14-17 are each dependent, directly or indirectly, on one of the independent claims 1, 5 or 13 discussed above. In that regard, each of claims 4, 6-9 and 14-17 are believed to be patentably distinct over the Miyashita et al. reference at least for reasons as discussed above with respect to claims 1, 5 and 13.

In addition, it is also submitted that claim 6 recites features that are further distinguished from the Miyashita et al. and Takahashi references. In particular, claim 6 recites that “upon termination of operation of the readout position change operator, playback of the waveform data returns to synchronization with the specified playback tempo at a readout position that would be the current readout position had the readout position change operator not been operated.” As discussed above with respect to claim 1, Miyashita et al. neither disclose nor suggest an instrument in which playback tempo returns to an specified tempo, upon termination of operation of an operator. Instead, Miyashita et al. describe an operator 13 that sets a basic tempo and a further operator 14 that allows a user to adjust the basic tempo, where the tempo remains as set by the operators 13 and 14, even after the user completes and terminates the operation of the operator.

In the Office Action, the Examiner cited paragraphs 0053, 0082 and 0126 of the Miyashita et al. reference, with respect to claims 6-9 and 14-17. However, those paragraphs do not disclose or suggest an instrument in which “playback of the waveform data returns to synchronization with the specified playback tempo at a readout position that would be the current readout position had the readout position change operator not been operated,” as recited in claim 6. Instead, as discussed above with respect to claim 1, Miyashita et al. describes operators 13

and 14 that allow a user to set a basic tempo and an adjusted tempo, respectively. However, in Miyashita et al, the tempo remains as set, even after the user completes and terminates operation of the operator (and there is no returning to synchronization with a specified tempo upon termination of operation of the operator). As discussed above, Takahashi does not address this distinction over the Miyashita et al. reference. Accordingly, it is respectfully submitted that dependent claim 6 is patentably distinguished over the Miyashita et al. reference and the Takahashi reference, individually or in the combination suggested by the Examiner.

Furthermore, it is submitted that dependent claim 7 is further distinguished over the cited references. Dependent claim 7 recites an instrument in which “the readout position change operator comprises a pressure sensitive surface, wherein operation of the readout position change operator is indicated by the application of at least a predetermined amount of pressure to the surface, and wherein an amount of readout position change is indicated by an amount of angular movement of a location of said pressure on the surface with respect to a reference point.”

As discussed above with respect to claim 2, Miyashita et al. describe a detecting unit 15 that detects “a pressing pressure when the user or the like touches the jog dial 14 by hand.” However, Miyashita et al. do not appear to describe or suggest a pressure sensitive surface “wherein an amount of readout position change is indicated by an amount of angular movement of a location of said pressure on the surface with respect to a reference point.” Instead, Miyashita et al.’s jog dial receives and detects pressure, but the location of the pressure on the jog dial is not changed angularly relative to a reference point. According to Miyashita et al., the knob 14 detects pressure from a user “tapping the top surface” of the knob 14, but not from an angular change relative to a reference point. (Miyashita et al. paragraph 0079.) Accordingly, it is submitted that claim 7 is further distinguished from the Miyashita et al. reference. Similarly, dependent claims 8 and 9 are yet further distinguished from the cited references, as reciting yet further features relating to angular movement. Takahashi does not address this distinction over the Miyashita et al. reference and, as noted above, was not cited by the Examiner for that purpose.

Accordingly, it is submitted that each of claims 6-9 are patentably distinguished over the Miyashita et al. reference and the Takahashi reference, individually or in the combination suggested by the Examiner. Similar comments apply to claims 14-17 (which recite similar features as claims 6-9, respectively, but are dependent upon independent method claim 13). Accordingly, it is also submitted that each of claims 14-17 are patentably distinguished over the Miyashita et al. reference and the Takahashi reference, individually or in the combination suggested by the Examiner.

II. Rejection of Claims 10-12 and 18-20 Under 35 U.S.C. 103(a)

Claims 10-12 and 18-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miyashita et al. in view of Takahashi and further in view of Capps et al. For similar reasons as discussed above with respect to claims 1, 5 and 13, it is also submitted that this rejection is traversed because claims 10-12 and 18-20 are patentably distinguished over the cited references.

In particular, claims 10-12 and 18-20 are each dependent, directly or indirectly, on one of the independent claims 5 or 13 discussed above. In that regard, each of claims 10-12 and 18-20 are believed to be patentably distinct over the Miyashita et al. reference at least for reasons as discussed above with respect to claims 5 and 13. Neither the Takahashi reference nor the Capps et al. reference address the above-noted distinctions over the Miyashita et al. reference. Instead, as noted above, the Takahashi reference was cited by the Examiner as describing the processing and storing of waveforms. The Capps et al. reference was cited by the Examiner as describing a bender lever operator. Accordingly, each of claims 10-12 and 18-20 are believed to be patentably distinct over the combination of the Miyashita et al., Takahashi and Capps et al. references suggested by the Examiner.

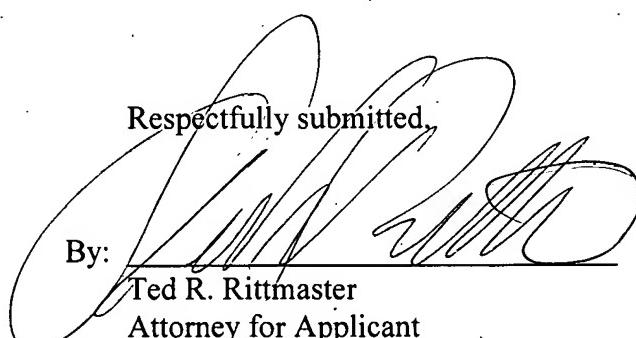
Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Date: November 18, 2005
FOLEY & LARDNER LLP
Customer Number: 23392
Telephone: (310) 975-7963
Facsimile: (310) 557-8475

Respectfully submitted,

By: 
Ted R. Rittmaster
Attorney for Applicant
Registration No. 32,933